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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA

Plaintiff,

THE WALKER RIVER PAIUTE TRIBE,

Plaintiff-Intervenor,

v.

THE WALKER RIVER IRRIGATION
DISTRICT, a corporation, et al.,

Defendants.

UNITED STATES OF AMERICA,
WALKER RIVER PAIUTE TRIBE,

Counterclaimants

v.

WALKER RIVER IRRIGATION
DISTRICT, et al.,

Counterdefendants.

IN EQUITY NO. C-125-B-ECR
3:73-cv-00127-ECR-LRL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO WITHDRAW AS
COUNSEL**

**(Peri & Sons Farms, Inc.; Desert Pearl
Farms; David J. and Pamela A. Peri Family
Trust)**

BACKGROUND

LAURA A. SCHROEDER and Schroeder Law Offices, P.C. ("Schroeder"), attorneys for
Peri & Sons Farms, Inc., Desert Pearl Farms, David J. and Pamela A. Peri Family Trust



(collectively referred to herein as the “Peri Entities”), in the above matter file this memorandum in support of their Motion to Withdraw as Counsel.

POINTS AND AUTHORITIES

A. Schroeder has Complied with LR IA 10-6.

This motion is made under LR IA 10-6. In support thereof, Laura A. Schroeder relies upon the Affidavit of Laura A. Schroeder in Support of Motion to Withdraw as Counsel (“Schroeder Affidavit”) filed herewith. Notice of Schroeder’s intent to seek withdrawal was provided to both opposing counsel and Peri Entities as required by LR IA 10-6(b). Schroeder Affidavit ¶¶ 7, 10.

B. 28 U.S.C. § 1654 does not require a substitute attorney as a condition of withdrawal.

In the context of a business entity, it is clear that pursuant to 28 U.S.C. § 1654, a company may only appear in federal court through a licensed attorney.¹ This general rule was the basis of this Court’s minute order dated September 16, 2008 denying a previous request to withdraw for another party.² In its order the Court cited, *United States v. High Country Broadcasting Co., Inc.*, and *Licht v. America West Airlines*, two cases wherein the Ninth Circuit affirmed court orders disallowing non-attorneys from representing business entities.³ In *High Country*, the President (and sole shareholder) of High Country Broadcasting Corporation, Inc. was attempting to represent the company in court. When High Country failed to adhere to an

¹ *Rowland v. California Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 201-203, 113 S.Ct. 716 (1993). (“[L]ower courts have uniformly held that 28 U.S.C. § 1654 providing that ‘parties may plead and conduct their own case personally or by counsel,’ does not allow corporations, partnerships, or associations to appear in federal court otherwise than through a licensed attorney.”).

² 28 U.S.C. § 1654 states: “In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.”

³ See Minute Order dated September 16, 2008 (Docket #1426), citing *United States v. High Country Broadcasting Co., Inc.*, 3 F.3d 1244 (9th Cir. 1993); certiorari denied 115 S.Ct. 93, 513 U.S. 826, 130 L.Ed.2d 44; *Licht v. America West Airlines*, 40 F.3d 1058 (9th Cir. 1994).



1 order to retain counsel, the district court entered a default judgment against it. As for *Licht*, the
2 Ninth Circuit upheld a bankruptcy court's order barring Sydney Licht, a non-attorney, from
3 representing a business association in which Licht was the senior partner.

4 While it is clear that business entities may appear only through a licensed attorney, there
5 is no support that 28 U.S.C. § 1654 likewise requires substitution of an attorney as a condition to
6 an attorney withdrawing from representation of a corporate defendant. As seen in *High Country*
7 and *Licht*, the statute places an onus upon the corporate *party* to appear only through a licensed
8 attorney or otherwise be barred from participating and risk default judgment. Neither of these
9 cases supports the proposition that 28 U.S.C. § 1654 burdens the unwilling attorney to
10 nevertheless continue representation until such time as the corporate defendant decides to
11 substitute counsel. Such an interpretation would result in a *de facto* appointment and subject vast
12 numbers of attorneys to potential unwarranted abuse by unscrupulous business owner *parties*.

13 **C. There is good cause to grant Schroeder's motion.**

14 Schroeder, in good faith, has advised Peri Entities of their need for alternate counsel
15 should they wish to appear in court and not sustain a default judgment. Schroeder Affidavit ¶ 9.
16 Peri Entities have not responded to multiple correspondences. Schroeder Affidavit ¶ 7. Given
17 that Peri Entities are unresponsive, Schroeder does not desire to continue the relationship, and a
18 compelled attorney-client relationship is not warranted under the circumstances of this case.
19 Schroeder has advised Peri Entities to locate and retain alternate counsel on several occasions.
20 Schroeder Affidavit ¶ 7. Schroeder has provided Peri Entities with ample opportunity to
21 substitute an attorney. Schroeder Affidavit ¶ 7.

22 In this case it is the party defendant, the Peri Entities, who holds the burden of providing
23 substitute counsel, or otherwise risk default judgment or being barred from participating further
24 in the litigation. 28 U.S.C. § 1654 does not condition Schroeder's withdrawal as counsel upon
25 the provision of a substitute attorney. It is the party's responsibility, not Schroeder's, to find
26 substitute counsel. It is proper to grant Schroeder's motion to withdraw.



1 WHEREFORE, Schroeder's Motion to Withdraw as Counsel should be granted.

2 DATED this 19th day of August, 2009.

3
4 SCHROEDER LAW OFFICES, P.C.

5
6 /s/ Laura A. Schroeder

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7 Wyatt E. Rolfe, NSB #10735

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